

Appl. No.: 09/578,001
Amdt. Dated: April 27, 2007
Reply of Office action of: December 27, 2006

Docket No. ROWL-9955

REMARKS

Claims 89, 92, 101, 104, 107, 110, 113, 116, 119, 122, 125, 128, 131, 134, 143, 146, 149, 152, 155, 158, 161, 164, 167, 170, 173, 176, 179, 182, 191, 194, 197, 200, 203, 206, 212, 260, 261, 262, 265, 266, 267, 268-276, 279-285, 307, 309, 310, and 312 are currently pending in the application. Applicants have now canceled claims 208, 210, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256 and 258.

It is noted that claims 255 and 327 have previously been canceled. It is further noted that claims 131 (previously presented) and 212 (previously presented) have not been rejected under the ground of nonstatutory obviousness-type double patenting or under 35 U.S.C. 103.

Applicants request reconsideration of the application in light of the following remarks.

Double Patenting Rejection

Claims 89, 92, 101, 104, 107, 110, 113, 116, 119, 122, 125, 128, 134, 143, 146, 149, 152, 155, 158, 161, 164, 167, 170, 173, 176, 179, 182, 191, 194, 197, 200, 203, 206, 208, 210, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 238, 240, 242, 244, 246, 248, 250, 252, 254, 255, 256, 258, 260, 261, 262, 265, 266, 267, 268-276, 279-285, 307, 309, 310, 312 and 327 stand rejected under the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No.7,065,429 to McClain et al. and provisionally rejected under the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-29 of copending allowed U.S. Application Serial No. 10/663,164, now U.S. Patent No.7,132,470 to McClain et al. In order to avoid further expenses and time delay, Applicants elect to expedite the prosecution of the present application by filing two terminal disclaimers to obviate the obviousness-type double

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patenting rejections in compliance with 37 CFR §1.321 (b) and (c). Applicants filing of the terminal disclaimers should not be construed as acquiescence of the Examiner's obviousness-type double patenting rejections. Attached are the terminal disclaimers and accompanying fee.

It is noted that claims 255 and 327 have previously been canceled. It is further noted that claims 131 (previously presented) and 212 (previously presented) have not been rejected under the ground of nonstatutory obviousness-type double patenting

The rejection of claims 89, 92, 101, 104, 107, 110, 113, 116, 119, 122, 125, 128, 134, 143, 146, 149, 152, 155, 158, 161, 164, 167, 170, 173, 176, 179, 182, 191, 194, 197, 200, 203, 206, 208, 210, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 238, 240, 242, 244, 246, 248, 250, 252, 254, 255, 256, 258, 260, 261, 262, 265, 266, 267, 268-276, 279-285, 307, 309, 310, 312 and 327 under the ground of nonstatutory obviousness-type double patenting is, therefore, obviated.

Applicants respectfully request that the obviousness-type double patenting rejections of claims 89, 92, 101, 104, 107, 110, 113, 116, 119, 122, 125, 128, 134, 143, 146, 149, 152, 155, 158, 161, 164, 167, 170, 173, 176, 179, 182, 191, 194, 197, 200, 203, 206, 208, 210, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 238, 240, 242, 244, 246, 248, 250, 252, 254, 255, 256, 258, 260, 261, 262, 265, 266, 267, 268-276, 279-285, 307, 309, 310, 312 and 327 be withdrawn.

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Rejections under 35 U.S.C. §103

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the cited prior art reference must teach or suggest all of the claim limitations. Furthermore, the suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based upon the Applicants' disclosure. A failure to meet any one of these criteria is a failure to establish a *prima facie* case of obviousness. MPEP §2143.

Claims

Claims 208, 210, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 238, 240, 242, 244, 246, 248, 250, 252, 254, 255, 256 and 258 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brock et al. (U.S. Patent No. 5,672,649, hereinafter "Brock"), in light of Hopper (U.S. Patent No. 3,758,432, hereinafter "Hopper") and Broome et al. (U.S. Patent No. 6,074,474, hereinafter "Broome"). Applicants respectfully traverse this rejection and request reconsideration of the claims.

Claims 208, 210, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 238, 240, 242, 244, 246, 248, 250, 252, 254, 255, 256 and 258 have been canceled without traverse to obtain immediate allowance of the allowable subject matter.

It is noted that claim 255 has previously been canceled. It is further noted that claims 131 (previously presented) and 212 (previously presented) have not been rejected under 35 U.S.C. 103.

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The rejection of claims 208, 210, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 238, 240, 242, 244, 246, 248, 250, 252, 254, 255, 256 and 258 is, therefore, obviated.

Applicants respectfully request that the obviousness rejections of claims 208, 210, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 238, 240, 242, 244, 246, 248, 250, 252, 254, 255, 256 and 258 be withdrawn.

Regarding Doctrine of Equivalents

Applicants hereby declare that any amendments herein that are not specifically made for the purpose of patentability are made for other purposes, such as clarification, and that no such changes shall be construed as limiting the scope of the claims or the application of the Doctrine of Equivalents.

CONCLUSION

Applicants respectfully request that a timely Notice of Allowance be issued in this case

It is requested that a one-month extension of time be granted for the filing of this response, and the appropriate extension filing fee of \$60 is to be charged to Deposit Account No. 19-0513.

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If any fees, including extension of time fees or additional claims fees, are due as a result of this response, please charge Deposit Account No. 19-0513. This authorization is intended to act as a constructive petition for an extension of time, should an extension of time be needed as a result of this response. The examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

Date: April 27, 2007

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